

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 14-CR-197

YANDI PONCE DE LEON, et al.,

Defendants.

**DECISION AND ORDER ON DEFENDANT'S
PRETRIAL MOTION TO SEVER COUNT ELEVEN**

On December 2, 2014, a federal grand jury in the Eastern District of Wisconsin returned a twelve count superseding indictment against nine defendants. Yandi Ponce De Leon ("Ponce De Leon") is charged in Count One with conspiracy to distribute heroin and cocaine, in violation of 21 U.S.C. § 841(b)(1)(A) and 846 and 18 U.S.C., § 2. (Docket # 72.) Ponce De Leon is charged in Count Four with distributing heroin, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(C), and 18 U.S.C., § 2. In Count Eleven, Ponce De Leon is charged with use of interstate facilities in the commission of murder-for-hire, in violation of 18 U.S.C. § 1958 and 2. Ponce De Leon was arraigned on the charges and entered a plea of not guilty. The case has been designated as complex and jury trial before the Honorable Rudolph T. Randa has not yet been scheduled.

Ponce De Leon has filed a pretrial motion requesting severance of Count Eleven from the superseding indictment. (Docket # 102.) He argues that joinder of Count Eleven is improper under Fed. R. Crim. P. 8(a) because the discovery does not show a connection between the alleged drug conspiracy and the alleged murder-for-hire charges and the two charges are not based on the same act and are not similar in nature. (*Id.* at 1-2.) Ponce De Leon further argues that pursuant to Fed. R.

Crim. P. 14(a), joinder of Count Eleven with the remaining counts will mislead and prejudice the jury. (*Id.* at 2.)

The government does not oppose Ponce De Leon's motion. (Docket # 108.) The government stated that it does not object to an order providing that if Ponce De Leon's case proceeds to trial, Count Eleven will be tried separately from the remaining counts. (*Id.*) However, if the case resolves prior to trial, Count Eleven need not be severed from the remaining counts. (*Id.*)

For the reasons articulated by Ponce De Leon and because the government does not object to the motion, Ponce De Leon's motion is granted.

NOW, THEREFORE, IT IS ORDERED that Ponce De Leon's Motion to Sever Count Eleven (Docket # 102) is **GRANTED**.

Your attention is directed to General L.R. 72(c), 28 U.S.C. § 636(b)(1)(B) and Federal Rules of Criminal Procedure 59(b), or Federal Rules of Civil Procedure 72(b) if applicable, whereby written objections to any recommendation or order herein, or part thereof, may be filed within fourteen days of the date of service of this recommendation or order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of a party's right to appeal. If no response or reply will be filed, please notify the Court in writing.

Dated at Milwaukee, Wisconsin this 29th day of April, 2015.

BY THE COURT

s/ Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge